IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10863 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADARSH HIGH SCHOOL,SECONDARY AND HIGHER SECONDARY SCHOOL

Versus

DIST. EDUCATION OFFICER OF AHMEDABAD

Appearance:

1. Special Civil Application No. 10863 of 2002

MR MB GANDHI for Petitioner No. 1

MRS TRUSHA M GANDHI for Petitioner No. 1

Mr. Prachhak, AGP or Respopondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 19/06/2003

ORAL JUDGEMENT

The present petition is filed under Article 226/227 of the Constitution of India challenging the order at Annexure "B" dated 7.10.2002 giving appointment to Smt. V.C. Shahadadpuri as Secondary Teacher in the petitioner's school. The petitioner has prayed for a

direction to the respondents to issue forthwith NOC to the petitioner's school management so as to appoint four teachers as per the requirement shown in Annexure "A" to the petition.

2. This Court has issued Notice on 23.10.2002, and thereafter on 22.11.2002 ad-interim relief in terms of Para 17(c) was granted and thereby the order dated 7.10.2002 was stayed. However, the said order was modified by this Court on 25.2.2003 whereby it was clarified that the implementation of the order dated 7th October 2002 was subject to the result of the petition and it was further clarified that no equity shall be created on account of the implementation of the impugned order dated 7th October 2002. This Court has further directed by the said order that the application for permission for appointment of other four teachers made by the petitioner school and pending before the State Government would be considered and decided within 15 days from the date of the said order, i.e., 25.2.2003. The matter was, thereafter, adjourned to 18th June 2003.

3. Heard Mr. MB Gandhi, learned advocate appearing for the petitioner and Mr. Prachhak, learned AGP appearing for the respondents. Mr. Gandhi has submitted that pursuant to the order passed by this Court on 25.2.2003, the surplus teacher, namely Smt. VC Shahadadpuri was taken in the roll of the petitioner school. However, the direction given by this Court in the order dated 25.2.2003 has not been complied with by the respondent. Mr. Prachhak, the learned AGP appearing for the respondents submits that the District Education Officer wrote letter dated 10th March 2003 to the Principal of the School stating that the petitioner school has not sent the report with regard to the presence of surplus teacher, namely VC Shahadadpuri. It was further stated in the said letter that since the proposal was not complete and to make it complete the file was taken back by the petitioner school and it is not sent till this date. Mr. Gandhi, learned advocate appearing for the petitioner further submitted that immediately on the next date, i.e. 11th March 2003 a reply was sent by the petitioner school stating that Ms. VC Shahadadpuri was allowed to work as a teacher as directed by this Court. He further submitted that the entire proposal with all the papers were lying with the school authorities and decision has to be taken by the respondent authorities as per the direction given by this Court in the order dated 25.2.2003. My attention was further drawn to two subsequent letters dated 31.3.2003 as well as 29.5.2003. In this connection, an additional

affidavit was filed on behalf of the petitioner school stating that inspite of all files being presented on 26.2.2003, no officer has cared to look into the matter and a usual letter was received repeating the contents of the previous letter of 31.3.2003 to the effect that for removing objections the files of the NOC are not presented. It is further reiterated in the said affidavit that all the things are lying in the office of DEO and though it is pointed out that files are lying in the office itself, even then with a view to evade the order of this Hon'ble Court and to give sanction to the petitioner school which is a minority institution running secondary and higher secondary school in Sindhi Medium and under the one pretext or the another the permission is evaded and practically more than 3 years are over and students have to suffer and unnecessarily other teachers who are not qualified in the subjects have to take additional lectures/periods.

4. After having considered the arguments put forth by the learned advocate appearing for the petitioner as well as the learned AGP appearing for the respondent authorities and after having perused the papers, I am of the view that though the permission was sought for much earlier the same is not granted. The respondent authorities have repeatedly stated that the objections are not removed and the file is with the petitioner school. Whatever may be the case, the matter is to be sorted out without entering into the controversy regarding availability of file etc., and for that purpose the respondent authorities are hereby directed to point out to the petitioner school as to which are the objections which come in the way of granting permission to the petitioner school and on pointing out the said objections, the petitioner school would look into it and remove the objections within 10 days from the receipt of communication from the respondent authorities. The respondent authorities shall intimate to the petitioner school within one week from today. On receipt of the reply from the petitioner school, the respondent authorities are directed to consider the said representation and take decision with regard to granting NOC for appointment of new teachers or for upgradation of the existing teachers who are rendering services in the secondary school. The said decision is to be taken by the respondent authorities within four weeks from the date of receipt of the reply and objections if any from the petitioner school.

5. It is expected that the time schedule prescribed hereinbefore shall be strictly adhered to by the parties.

With these directions, the petition is accordingly disposed of. Interim order passed by this Court on 22.11.2002 qua the appointment of Smt. VC Shahadadpuri stands confirmed. Rule is made absolute to the above extent. No order as to costs.

rmr. [K.A. Puj, J.]